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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/598,235

08/22/2006

Victoria Heather Cobb

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EXAMINER

AHVAZI, BIJAN

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

06/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/598,235	Applicant(s) COBB ET AL.	
	Examiner Bijan Ahvazi	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 16 and 18 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16 and 18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/22/2006</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 11 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 11 recites "sodium alginate" being depended on claim 9, wherein the crosslinking component comprises the metal ion with +2 oxidation state. However, sodium is +1 oxidation state, thus render the claim indefinite.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-12, 16 and 18 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,15,16 and 17 of the

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compending Application No. (US 11/912,010) and claims 1, 12, 13, and 14 of the compending Application No. (US 11/911,443), in view of Jones *et al.* (WO 02/102957). Although the preambles are different, and the conflicting claims are not identical; they are not patentably distinct from each other because the present claims indicated above also cover compositions which overlap with the claims of the compending applications above, and thus, render the present claims ***prima facie*** obvious. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method for the treatment of a surface by Jones *et al.* so as to include gel patch as taught by the compending Applications with reasonable expectation that this would result in disinfecting hard surface cleaning with improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger. Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the method for the treatment of a surface by Jones *et al.* with gel patch as taught by the compending Applications in order to provide improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-3, 5, 6, 14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Jones *et al.* (WO 02/102957).

Regarding claim 1, Jones *et al.* disclose a method for the treatment of a textile and to products for use therein (Page 1, lines 4-5), wherein the products comprise a polymer (i.e. hydrogel, Page 8, line 20) retaining a textile treatment agent (Page 1, line 7), optionally having a liquid impervious backing attached to the polymer, and, optionally, a liquid impervious external wrapping encasing substantially all of the patch (i.e. removable, Page 1, line 28), preferably encasing the entire patch (Page 1, lines 7-11). Generally, synthetic hydrogels are formed by polymerizing a hydrophilic monomer in an aqueous solution under conditions where the polymer becomes cross-linked so as to form a three dimensional polymer network. Natural hydrogels are also included, such as alginates and polysaccharides, such as xanthan and locust bean gum (Page 8, lines 24-30).

Regarding claims 2, 3, Jones *et al.* disclose the method for the treatment of a surface such as treat textiles (soft surface) such as carpets, mats, upholstery, fabrics and wall-coverings in various ways (Page 1, lines 13-15).

Regarding claim 5, Jones *et al.* disclose the method for the treatment of a surface wherein the article is wrapped in a liquid impervious wrapping wherein the wrapping is ideally comprised of one or more peelable or tearable polymer sheets (Page 10, lines 13-15). In one embodiment the patch is then removed, preferably by peeling (Page 2, lines 7-8).

Regarding claim 6, Jones *et al.* disclose the method for the treatment of a surface wherein the patch is left remaining on the textile and is removed by a washing process, such as in a textile washing machine. Preferably the patch is made from a water-soluble or dispersible polymer which dissolves or disperses into wash liquor (Page 2, lines 10-15).

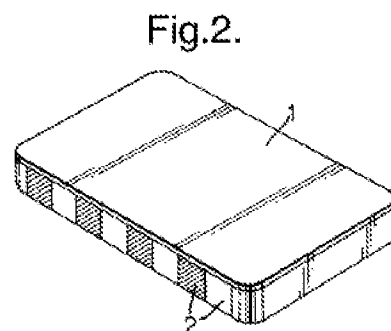
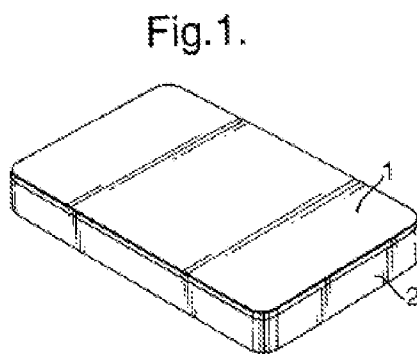
Regarding claim 14, Jones *et al.* disclose the textile treatment agent is within a

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fluid, (either dissolved or suspended) in the form of a composition which may include one or more of the following; a bleach (with or without a bleach activator), an enzyme system (including any necessary stabilizers) and at least one surfactant (Page 3, lines 20-25).

Regarding claim 16, Jones *et al.* disclose a kit comprising a hydrogel-precursor-containing component and a crosslinking component such as the patch wherein the patch is dispensed from a roll or strip (read on a kit) in which multiple patches are mutually attached via a tear line, ideally found in the external wrapping (Page 12, lines 1-6).

Regarding claim 18, Jones *et al.* disclose an applicator means such as a patch with water impervious backing (1) made of a polymer sheet to which is attached a hydrogel (2) containing a surfactant treatment fluid (Page 10, lines 28-29) as shown in Figure 1. Figure 2 shows a patch with a water impervious backing (1) made of polymer sheet to which is attached two different hydrogels (2) alternatively along the backing sheet. The first hydrogel contains a treatment fluid containing bleach and the second contains a treatment fluid containing an enzyme (Page 11, lines 4-10).



**Claim
Rejection**

ns - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 4, 9, 10, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones *et al.* (WO 02/102957) as applied to claim 1-3, 5, 6, 14, 16 and 18 above, and further in view of Cheung *et al.* (Pat. No US 7,256,167 B2).

Regarding claim 4, Jones *et al.* disclose the claimed method for the treatment of a surface as discussed above. However, Jones *et al.* do not expressly disclose the method wherein the surface is a hard surface.

Cheung *et al.* disclose a method of treating a hard surface comprising applying an effective amount of a composition on a surface in need of treatment (Col. 26, lines 11-14). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method for the treatment of a surface by Jones *et al.* so as to include a liquid pourable hard surface as taught by Cheung *et al.* with reasonable expectation that this would result in disinfecting hard surface cleaning with improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger.

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the method for the treatment of a surface by Jones *et al.* with a liquid pourable hard surface as taught by Cheung *et al.* in order to provide improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger.

Regarding claims 9, 10, 11, Cheung *et al.* disclose alginate based particulate materials used for the suspended inclusions in the compositions is formed from an alginate or salts of

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alginic acid such as potassium alginate, calcium alginate (read on M^{2+} , belongs to group IIA with metallic element capable of exhibiting +2 oxidation state) or sodium alginate salts (Col. 5, lines 55-59), and advantageously may be conveniently harvested from naturally occurring seaweed especially of the species *Laminaria* wherein the sodium alginate form predominates (Col. 5, lines 59-61).

Regarding claim 13, Cheung *et al.* disclose the alginate based particulate materials may contain from about 0.5% wt. to 100% wt. of an alginate or alginate salt, although quite frequently the amount of alginate in the alginate based particulate materials are much less, generally on from about 0.5% wt. to about 10% wt., more preferably from about 0.5% wt. to about 5% wt (Col. 6, lines 24-29).

9. Claims 7, 8 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones *et al.* (WO 02/102957) as applied to claim 1-3, 5, 6, 14, 16 and 18 above, and further in view of Tsaur *et al.* (WO 98/08601).

Regarding claims 7 and 8, Jones *et al.* disclose the method of treating a surface as discussed above. However, Jones *et al.* do not expressly disclose the method wherein the crosslinking component is applied to the surface prior to the application of the hydrogel-precursor component or wherein a second application of the crosslinking component is made after the application of the hydrogel-precursor component.

Tsaur *et al.* disclose ideally, the polymer of (i) is solubilized by crosslinking with a crosslinker present in the aqueous solution (read on the crosslinking is made after the application of hydrogel-precursor) (Page 6, lines 33-35) as set forth (Page 5, lines 13-20). Thus when the polymer (i) is carboxymethyl cellulose, the crosslinker is potassium ion. Similarly, when the polymer (i) is

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alginate, the cross-linker is calcium ion. Again, when the polymer (i) is polyvinyl alcohol, the cross-linker is borax ion wherein the crosslinking component is applied prior to the application of hydrogel-precursor (Page 7, lines 1-4). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method for the treatment of a surface by Jones *et al.* so as to include crosslinking component is made after the application of hydrogel-precursor component as taught by Tsauro *et al.* with reasonable expectation that this would result in improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger. Since it is held that changing the order of steps does not render a claimed process non-obvious over the prior art, see *Ex parte Rubin*, 128 USPQ 440,441,442 (POBA 1959).

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the method for the treatment of a surface by Jones *et al.* with include crosslinking component is made after the application of hydrogel-precursor component as taught by Tsauro *et al.* in order to impart desirable in use characteristics (e.g., smooth, rich, creamier feel) to the composition and applying to the surface, wherein the surface is soft surface or hard surface.

Regarding claim 12, Jones *et al.* disclose the features as discussed above. However, Jones *et al.* do not expressly disclose the amount of hydrogel-precursor.

Tsauro *et al.* disclose 5 to 60% by wt. of a hydrogel composition (Page 5, lines 22-23) comprising: (i) 0.1 to 30% by wt. of hydrogel composition, preferably 0.3-15% of at least one polymer which is soluble in water, but which is insolubilized, ideally by thermal gelation, when placed in said aqueous solution (Page 5, lines 25-28) ; and (ii) 0.2 to 30%, preferably 0.5-10% by wt. of hydrogel composition of at least a second polymer which is soluble in water and either

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soluble or dispersible in said aqueous solution (Page 5, lines 30-33); and (iii) 1.0 to 60% by wt., preferably 5 to 40% by wt. of a water insoluble beneficial agent which is entrapped in a network formed by polymers (i) and (ii); wherein particles of said benefit agent have a particle size preferably of about 0.2 to 200 micrometers (Page 6, lines1-5). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the method for the treatment of a surface by Jones *et al.* so as to include a specific amount of hydrogel as taught by Tsaur *et al.* with reasonable expectation that this would result in improved composition and avoid any presence of strong acids which is known to be an irritant to the skin and further offers the potential of toxicological danger.

Thus, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have provided the method for the treatment of a surface by Jones *et al.* with a specific amount of hydrogel as taught by Tsaur *et al.* in order to impart desirable in use characteristics (e.g., smooth, rich, creamier feel) to the composition. The subject matter as a whole would have been obvious to one having ordinary skill in the art at the time the invention was made, since it has been held that a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977).

Examiner Information

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bijan Ahvazi, Ph.D. whose telephone number is (571)270-3449. The examiner can normally be reached on M-F 8:0-5:0. (Off every other Friday).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BA/
Bijan Ahvazi,
Examiner
Art Unit 1796

/Harold Y Pyon/
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06/09/2009